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DEC 06 2011

PCT LEGAL ADMINISTRATION

In re Application of: HANAUSKE-ABEL et al. :
U.S. Application No: 10 /581,658 :
PCT Application No.: PCT/US2004/040236 :
International Filing Date: 01 December 2004 :
Priority Date: 03 December 2003 :
Attorney's Docket No.: NJMS 03-36 :
For: METHOD OF PREVENTING SURVIVAL OF :
RETROVIRALLY INFECTED CELLS AND :
OF INHIBITING FORMATION OF :
INFECTIOUS RETROVIRUSES :

DECISION ON PETITION
UNDER
37 CFR 1.137(b)

This decision is in response to applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" filed 02 September 2011.

BACKGROUND

01 December 2004, applicants filed international application PCT/US2004/040236, which claimed priority of earlier US provisional application filed 03 December 2003. The thirty-month period for paying the basic national fee in the United States expired on 03 June 2006.

On 01 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 14 February 2007, the DO/EO/US mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b), and a surcharge fee as set forth in 37 CFR 1.492(h) must be filed.

On 15 April 2007, the present application became abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 02 September 2011, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional; and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply by submitting a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee for filing oath or declaration after commencement of the national stage.

With regard to item (2), applicant has provided the required petition fee set forth in 37 CFR 1.17(m).

The above-identified application has been abandoned for an extended period of time. The USPTO is relying on petitioner's duty of candor and good faith and accepting applicant's statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 7 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure 62 Fed. Reg. at 53160 and 53718, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.8 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the United States Patent and Trademark Office.)

With regard to item (3), applicant has provided the proper statement under 37 CFR 1.137(b)(3).

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.


CONCLUSION

For the reason above, the petition under 37 CFR 1.137(b) is **GRANTED**.

The application has an International Filing Date under 35 U.S.C. 363 of 01 December 2004, and a date under 35 USC 371(c)(1), (c)(2), and (c)(4) of 02 September 2011.

The application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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